

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE AUGUST 29, 2011

AMENDED IN SENATE AUGUST 18, 2011

AMENDED IN SENATE JULY 7, 2011

AMENDED IN SENATE FEBRUARY 23, 2011

**SENATE BILL**

**No. 116**

---

---

**Introduced by Senators De León and Steinberg**

January 19, 2011

---

---

An act to amend Sections 23101, ~~25113, 25128, 25128.5, and 25136 and 25128~~ of, *to amend and repeal Sections 25128.5 and 25136 of*, to add Sections 6377 ~~and 25136.1~~, 25128.7, 25136.1, and 25136.2 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as amended, De León. Income taxes: hiring credit: single sales factor: sales and use taxes: manufacturing exemption.

(1) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the business income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance

with a specified 3-factor formula. Existing law, for taxable years beginning on or after January 1, 2011, authorizes a taxpayer required to apportion its business income in accordance with the 4-factor formula to make an annual election to have that business income apportioned in accordance with a single sales factor formula. *That law also provides that sales of tangible and intangible personal property are in the state in accordance with specified criteria.*

~~This bill would eliminate the authorization for specified taxpayers to elect to have business income apportioned in accordance with a single sales factor formula and instead require those taxpayers to apportion their business income in accordance with a single sales factor formula for taxable years beginning on or after January 1, 2011, and would make related changes. This bill would, for taxable years beginning on or after January 1, 2011, authorize specified taxpayers to elect to have business income apportioned in accordance with the 4-factor formula rather than in accordance with a single sales factor formula, if the tax before the application of any credits using the 4-factor formula to apportion business income is not less than the tax before the application of any credits using the single sales factor formula to apportion that income. This bill would also revise the method by which source of income is determined for a qualified taxpayer, as defined., for taxable years beginning on or after January 1, 2012, revise the rules that determine whether a taxpayer is doing business within this state, revise the provisions that determine whether specified sales occur in this state, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.~~

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each net increase in full-time employees hired by a qualified employer. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year. ~~Those laws establish a cut-off date when the total amount of credit allocated under those laws reaches \$400,000,000.~~

This bill, under both laws, for taxable years beginning on or after January 1, ~~2011~~ 2012, would increase the amount of the credit to \$4,000 for each net increase in full-time employees hired by a qualified employer that employs 50 or fewer employees, as of the last day of the preceding taxable year. ~~This bill would change the cut-off date to either~~

~~when the total amount of credit allocated under those laws reaches \$400,000,000, as provided, or on December 31, 2015, whichever occurs first not apply the credit to taxable years beginning on or after January 1, 2014.~~

(3) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

On and after January 1, 2012, this bill would provide partial exemptions equal to specified percentages of state sales and use taxes imposed at a combined rate of 5% for the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of *tangible personal* property; in research and development; to maintain, repair, measure, or test specified *tangible personal* property; and by a contractor for use in a construction contract with a qualified person, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes and transactions and use taxes.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6377 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377. (a) (1) Except as provided in subdivision (e), on and
- 4 after January 1, 2012, there are exempted from  $78\frac{3}{4}$  percent of

1 the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 the  
2 gross receipts from the sale of, and the storage, use, or other  
3 consumption in this state of, any of the following:

4 (A) Tangible personal property purchased for use by a qualified  
5 person to be used primarily in any stage of the manufacturing,  
6 processing, refining, fabricating, or recycling of tangible personal  
7 property, beginning at the point any raw materials are received by  
8 the qualified person and introduced into the process and ending at  
9 the point at which the manufacturing, processing, refining,  
10 fabricating, or recycling has altered the property to its completed  
11 form, including packaging, if required.

12 (B) Tangible personal property purchased for use by a qualified  
13 person to be used primarily in research and development.

14 (C) Tangible personal property purchased for use by a qualified  
15 person to be used primarily to maintain, repair, measure, or test  
16 any property described in subparagraph (A) or (B).

17 (D) Tangible personal property purchased by a contractor for  
18 use in the performance of a construction contract for a qualified  
19 person that will use the tangible personal property as an integral  
20 part of the manufacturing, processing, refining, fabricating, or  
21 recycling process, or as a research or storage facility for use in  
22 connection with the manufacturing process.

23 (2) The exemption established by this section shall not apply  
24 to the gross receipts from the sale of, or the storage, use, or other  
25 consumption of any of the following:

26 (A) Tangible personal property that is used primarily in  
27 administration, general management, or marketing.

28 (B) Consumables with a useful life of less than one year.

29 (C) Furniture, inventory, equipment used in the extraction  
30 process, or equipment used to store finished products that have  
31 completed the manufacturing process.

32 (b) For purposes of this section:

33 (1) “Acquire” includes any gift, inheritance, transfer incident  
34 to divorce, or any other transfer, whether or not for consideration.

35 (2) “Fabricating” means to make, build, create, produce, or  
36 assemble components or *tangible personal* property to work in a  
37 new or different manner.

38 (3) “Manufacturing” means the activity of converting or  
39 conditioning tangible personal property by changing the form,  
40 composition, quality, or character of the property for ultimate sale

1 at retail or use in the manufacturing of a product to be ultimately  
2 sold at retail. Manufacturing includes any improvements to tangible  
3 personal property that result in a greater service life or greater  
4 functionality than that of the original property. Manufacturing  
5 includes the generation of electricity.

6 (4) “Primarily,” for the purposes of subdivision (a), means  
7 tangible personal property used 50 percent or more of the time in  
8 an activity described in subdivision (a).

9 (5) “Process” means the period beginning at the point at which  
10 any raw materials are received by the qualified person and  
11 introduced into the manufacturing, processing, refining, fabricating,  
12 or recycling activity of the qualified person and ending at the point  
13 at which the manufacturing, processing, refining, fabricating, or  
14 recycling activity of the qualified person has altered tangible  
15 personal property to its completed form, including packaging, if  
16 required. Raw materials shall be considered to have been  
17 introduced into the process when the raw materials are stored on  
18 the same premises where the qualified person’s manufacturing,  
19 processing, refining, fabricating, or recycling activity is conducted.  
20 Raw materials that are stored on premises other than where the  
21 qualified person’s manufacturing, processing, refining, fabricating,  
22 or recycling activity is conducted, shall not be considered to have  
23 been introduced into the manufacturing, processing, refining,  
24 fabricating, or recycling process.

25 (6) “Processing” means the physical application of the materials  
26 and labor necessary to modify or change the characteristics of  
27 *tangible personal* property.

28 (7) “Qualified person” means a person that is either of the  
29 following:

30 (A) A new trade or business that is primarily engaged in those  
31 lines of business classified in Industry Groups 3111 to 3399,  
32 inclusive, Industry Group 5112, NAICS Industry 221119, or  
33 NAICS Industry 541711 of the North American Industry  
34 Classification System (NAICS) published by the United States  
35 Office of Management and Budget (OMB), 2007 edition. In  
36 determining whether a trade or business activity qualifies as a new  
37 trade or business, the following rules shall apply:

38 (i) In any case where a person purchases or otherwise acquires  
39 all or any portion of the assets of an existing trade or business  
40 (irrespective of the form of entity) that is doing business in this

1 state (within the meaning of Chapter 2 (commencing with Section  
2 23101) of Part 11), the trade or business thereafter conducted by  
3 that person (or any related person) shall not be treated as a new  
4 business if the aggregate fair market value of the acquired assets  
5 (including, real, personal, tangible, and intangible property) used  
6 by that person (or any related person) in the conduct of his or her  
7 trade or business exceeds 20 percent of the aggregate fair market  
8 value of the total assets of the trade or business being conducted  
9 by the person (or any related person). For purposes of this  
10 subparagraph only, the following rules shall apply:

11 (I) The determination of the relative fair market values of the  
12 acquired assets and the total assets shall be made as of the last day  
13 of the month following the quarterly period in which the person  
14 (or any related person) first uses any of the acquired trade or  
15 business assets in his or her business activity.

16 (II) Any acquired assets that constituted property described in  
17 Section 1221(a) of the Internal Revenue Code in the hands of the  
18 transferor shall not be treated as assets acquired from an existing  
19 trade or business, unless those assets also constitute property  
20 described in Section 1221(a) of the Internal Revenue Code in the  
21 hands of the acquiring person (or related person).

22 (ii) In any case where a person (or any related person) is engaged  
23 in one or more trade or business activities in this state, or has been  
24 engaged in one or more trade or business activities in this state  
25 within the preceding 36 months (prior trade or business activity),  
26 and thereafter commences an additional trade or business activity  
27 in this state, the additional trade or business activity shall only be  
28 treated as a new business if the additional trade or business activity  
29 is classified under a different Industry Group (4-digit) of the  
30 NAICS published by the United States OMB, 2007 edition, than  
31 are any of the person's (or any related person's) current or prior  
32 trade or business activities in this state.

33 (iii) In any case where a person, including all related persons,  
34 is engaged in trade or business activities wholly outside of this  
35 state and that person first commences doing business in this state  
36 (within the meaning of Chapter 2 (commencing with Section  
37 23101) of Part 11) on or after January 1, 2012, (other than by  
38 purchase or other acquisition described in clause (i)), the trade or  
39 business activity shall be treated as a new business.

1 (iv) In any case where the legal form under which a trade or  
2 business activity is being conducted is changed, the change in form  
3 shall be disregarded and the determination of whether the trade or  
4 business activity is a new business shall be made by treating the  
5 person as having purchased or otherwise acquired all or any portion  
6 of the assets of an existing trade or business under the rules of  
7 clause (i).

8 (v) A “qualified person” shall not be regarded as a new trade  
9 or business when the qualified person has conducted business  
10 activities in a new trade or business for three or more years.

11 (B) A trade or business, other than a new trade or business  
12 described in subparagraph (A), that is primarily engaged in those  
13 lines of business classified in Industry Groups 3111 to 3399,  
14 inclusive, Industry Group 5112, NAICS Industry 221119, or  
15 NAICS Industry 541711 of the NAICS published by the United  
16 States OMB, 2007 edition.

17 (8) “Qualified person” shall not include a person that is a  
18 member of a combined reporting group that is required to apportion  
19 its income pursuant to subdivision (b) of Section 25128 as that  
20 section read on January 1, 2011. For purposes of this paragraph,  
21 a person is a member of a combined reporting group if its tax  
22 liability or net income for purposes of Part 11 (commencing with  
23 Section 23001) is determined by a combined report pursuant to  
24 Section 25101 or 25110, or is an entity included in the combined  
25 report. For purposes of the preceding sentence, “member” has the  
26 same meaning as that term is defined in paragraph (10) of  
27 subdivision (b) of Section 25106.5 of Title 18 of the California  
28 Code of Regulations as that paragraph read on January 1, 2011,  
29 and “combined reporting group” has the same meaning as that  
30 term is defined in paragraph (3) of subdivision (b) of Section  
31 25106.5 of Title 18 of the California Code of Regulations as that  
32 paragraph read on January 1, 2011.

33 (9) “Refining” means the process of converting a natural  
34 resource to an intermediate or finished product.

35 (10) “Related person” means any person that is related to another  
36 person under either Section 267 or 318 of the Internal Revenue  
37 Code.

38 (11) “Research and development” means those activities that  
39 are described in Section 174 of the Internal Revenue Code or in  
40 any regulations thereunder.

1 (12) “Tangible personal property” includes, but is not limited  
2 to, all of the following:

3 (A) Machinery and equipment, including component parts and  
4 contrivances such as belts, shafts, moving parts, and operating  
5 structures.

6 (B) All equipment or devices used or required to operate,  
7 control, regulate, or maintain the machinery, including, without  
8 limitation, computers, data processing equipment, and computer  
9 software, together with all repair and replacement parts with a  
10 useful life of one or more years therefor, whether purchased  
11 separately or in conjunction with a complete machine and  
12 regardless of whether the machine or component parts are  
13 assembled by the taxpayer or another party.

14 (C) Property used in pollution control that meets or exceeds  
15 standards established by this state or any local or regional  
16 governmental agency within this state.

17 (D) Special purpose buildings and foundations used as an  
18 integral part of the manufacturing, processing, refining, or  
19 fabricating process, or that constitute a research or storage facility  
20 used during the manufacturing process. Buildings used solely for  
21 warehousing purposes after completion of the manufacturing  
22 process are not included.

23 (E) Property used in recycling.

24 (13) “Useful life” for tangible personal property that a qualified  
25 person treats as having a useful life of one or more years for state  
26 income or franchise tax purposes shall be deemed to have a useful  
27 life of one or more years for purposes of this section. Useful life  
28 for tangible personal property that a qualified person treats as  
29 having a useful life of less than one year for state income or  
30 franchise tax purposes shall be deemed to have a useful life of less  
31 than one year for purposes of this section.

32 (c) An exemption shall not be allowed under this section unless  
33 the purchaser furnishes the retailer with an exemption certificate,  
34 completed in accordance with any instructions or regulations as  
35 the board may prescribe, and the retailer ~~subsequently furnishes~~  
36 ~~the board with a copy of the exemption certificate~~ *retains the*  
37 *exemption certificate in his or her records.* The exemption  
38 certificate shall contain the sales price of the tangible personal  
39 property, the sale of, or the storage, use, or other consumption of

1 which is exempt pursuant to subdivision (a) and shall be furnished  
2 to the board upon request.

3 (d) Notwithstanding subdivision (a), the exemption established  
4 by this section shall not apply with respect to any tax levied by a  
5 county, city, or district pursuant to, or in accordance with, the  
6 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
7 (commencing with Section ~~4200~~ 7200)) or the Transactions and  
8 Use Tax Law (Part 1.6 (commencing with Section 7251)).

9 (e) Notwithstanding subdivision (a), on and after January 1,  
10 2012, for a qualified person described in subparagraph (B) of  
11 paragraph (7) of subdivision (b), or for a contractor performing a  
12 construction contract as described in subparagraph (D) of paragraph  
13 (1) of subdivision (a), the exemption established by this section  
14 shall apply only with respect to 60 percent of the tax levied by  
15 Sections 6051, 6051.3, 6201, and 6201.3.

16 (f) Notwithstanding subdivision (a), the exemption provided by  
17 this section shall not apply to any sale or use of property which,  
18 within one year from the date of purchase, is either removed from  
19 California or converted from an exempt use under subdivision (a)  
20 to some other use not qualifying for the exemption.

21 (g) If a purchaser certifies in writing to the seller that the  
22 property purchased without payment of the tax will be used in a  
23 manner entitling the seller to regard the gross receipts from the  
24 sale as exempt from the sales tax pursuant to this section, and  
25 within one year from the date of purchase, the purchaser (1)  
26 removes that property outside California, (2) converts that property  
27 for use in a manner not qualifying for the exemption, or (3) uses  
28 that property in a manner not qualifying for the exemption, the  
29 purchaser shall be liable for payment of sales tax, with applicable  
30 interest, as if the purchaser were a retailer making a retail sale of  
31 the property at the time the property is so removed, converted, or  
32 used, and the sales price of the property to the purchaser shall be  
33 deemed the gross receipts from that retail sale.

34 (h) The exemption established by this section shall apply to a  
35 lease of tangible personal property classified as a “continuing sale”  
36 or “continuing purchase” in accordance with Section 6006.1 or  
37 6010.1, and to the rentals payable pursuant to such a lease, provided  
38 the lessee is a qualified person and the tangible personal property  
39 is used in an activity described in subdivision (a).

1 (i) At the time necessary information technologies and electronic  
 2 data warehousing capabilities of the board are sufficiently  
 3 established, the board shall determine an efficient means by which  
 4 qualified persons may electronically apply for, and receive, an  
 5 exemption certificate that contains information that would assist  
 6 retailers in complying with this part with respect to the exemption  
 7 established by this section.

8 SEC. 2. Section 17053.80 of the Revenue and Taxation Code,  
 9 as added by Section 3 of Chapter 10 of the Third Extraordinary  
 10 Session of the Statutes of 2009, is repealed.

11 SEC. 3. Section 17053.80 of the Revenue and Taxation Code,  
 12 as added by Section 3 of Chapter 17 of the Third Extraordinary  
 13 Session of the Statutes of 2009, is amended to read:

14 17053.80. (a) There shall be allowed *as* a credit against the  
 15 “net tax,” as defined in Section 17039, *the amount specified in*  
 16 *paragraph (1) or (2)* for each net increase in qualified full-time  
 17 employees, as specified in subdivision (c), hired during the taxable  
 18 year by a qualified ~~employer, as follows:~~ *employer.*

19 (1) For each taxable year beginning on or after January 1, 2009,  
 20 and before January 1, ~~2011~~ 2012, the credit shall be equal to three  
 21 thousand dollars (\$3,000).

22 (2) For each taxable year beginning on or after January 1, ~~2011~~  
 23 2012, and before January 1, ~~2015~~ 2014, the credit shall be equal  
 24 to four thousand dollars (\$4,000).

25 (b) For purposes of this section:

26 (1) “Acquired” includes any gift, inheritance, transfer incident  
 27 to divorce, or any other transfer, whether or not for consideration.

28 (2) “Qualified full-time employee” means:

29 (A) A qualified employee who was paid qualified wages *during*  
 30 *the taxable year* by the qualified employer for services of not less  
 31 than an average of 35 hours per week.

32 (B) A qualified employee who was a salaried employee and  
 33 was paid compensation during the taxable year for full-time  
 34 employment, within the meaning of Section 515 of the Labor Code,  
 35 by the qualified employer.

36 (3) A “qualified employee” shall not include any of the  
 37 following:

38 (A) An employee certified as a qualified employee in an  
 39 enterprise zone designated in accordance with Chapter 12.8

1 (commencing with Section 7070) of Division 7 of Title 1 of the  
2 Government Code.

3 (B) An employee certified as a qualified disadvantaged  
4 individual in a manufacturing enhancement area designated in  
5 accordance with Section 7073.8 of the Government Code.

6 (C) An employee certified as a qualified employee in a targeted  
7 tax area designated in accordance with Section 7097 of the  
8 Government Code.

9 (D) An employee certified as a qualified disadvantaged  
10 individual or a qualified displaced employee in a local agency  
11 military base recovery area (LAMBRA) designated in accordance  
12 with Chapter 12.97 (commencing with Section 7105) of Division  
13 7 of Title 1 of the Government Code.

14 (E) An employee whose wages are included in calculating any  
15 other credit allowed under this part.

16 (4) “Qualified employer” means ~~either of the following:~~

17 (A) ~~For each taxable year~~ *taxable years* beginning on or after  
18 January 1, 2009, and before January 1, ~~2011~~ 2012, a taxpayer that,  
19 as of the last day of the preceding taxable year, employed a total  
20 of 20 or fewer employees.

21 (B) ~~For each taxable year beginning on or after January 1, 2011,~~  
22 *taxable years beginning on or after January 1, 2012, and before*  
23 *January 1, 2014,* a taxpayer that, as of the last day of the preceding  
24 taxable year, employed a total of 50 or fewer employees.

25 (5) “Qualified wages” means wages subject to Division 6  
26 (commencing with Section 13000) of the Unemployment Insurance  
27 Code.

28 (6) (A) “Annual full-time equivalent” means either of the  
29 following:

30 (i) In the case of a full-time employee paid hourly qualified  
31 wages, “annual full-time equivalent” means the total number of  
32 hours worked for the taxpayer by the employee (not to exceed  
33 2,000 hours per employee) divided by 2,000.

34 (ii) In the case of a salaried full-time employee, “annual full-time  
35 equivalent” means the total number of weeks worked for the  
36 taxpayer by the employee divided by 52.

37 (B) If either of the taxable years used to compute the net increase  
38 in qualified full-time employees in paragraph (1) of subdivision  
39 (c) is a period of less than 12 months, the computation of “annual  
40 full-time equivalents” as prescribed in subparagraph (A) shall be

1 annualized by adjusting the number of hours or weeks, respectively,  
2 in the formula so that each annual full-time equivalent equals a  
3 12-month equivalent.

4 (c) The net increase in qualified full-time employees of a  
5 qualified employer shall be determined as provided by this  
6 subdivision:

7 (1) (A) The net increase in qualified full-time employees shall  
8 be determined on an annual full-time equivalent basis by  
9 subtracting from the amount determined in subparagraph (C) the  
10 amount determined in subparagraph (B).

11 (B) The total number of qualified full-time employees employed  
12 in the preceding taxable year by the taxpayer and by any trade or  
13 business acquired by the taxpayer during the current taxable year.

14 (C) The total number of full-time employees employed in the  
15 current taxable year by the taxpayer and by any trade or business  
16 acquired during the current taxable year.

17 (2) For taxpayers ~~who~~ *that* first commence doing business in  
18 this state during the taxable year, the number of full-time  
19 employees for the immediately preceding prior taxable year shall  
20 be zero.

21 (d) In the case where the credit allowed by this section exceeds  
22 the “net tax,” the excess may be carried over to reduce the “net  
23 tax” in the following year, and *the* succeeding seven years if  
24 necessary, until the credit is exhausted.

25 (e) Any deduction otherwise allowed under this part for qualified  
26 wages shall not be reduced by the amount of the credit allowed  
27 under this section.

28 (f) For purposes of this section:

29 (1) All employees of the trades or businesses that are treated as  
30 related under either Section 267, 318, or 707 of the Internal  
31 Revenue Code shall be treated as employed by a single taxpayer.

32 (2) In determining whether the taxpayer has first commenced  
33 doing business in this state during the taxable year, the provisions  
34 of subdivision (f) of Section 17276.20, without application of  
35 paragraph (7) of that subdivision, shall apply.

36 (g) (1) (A) Credit under this section and Section 23623 shall  
37 be allowed only for credits claimed on *a* timely filed original  
38 ~~returns~~ *return* received by the Franchise Tax Board on or before  
39 the cut-off date established by the Franchise Tax Board.

1 (B) For purposes of this paragraph, the cut-off date shall be the  
2 earlier date of the following:

3 (i) ~~The~~ last day of the calendar quarter within which the  
4 Franchise Tax Board estimates it will have received timely filed  
5 original returns claiming credits under this section and Section  
6 23623 that cumulatively total four hundred million dollars  
7 (\$400,000,000) for all taxable years.

8 (ii) ~~December 31, 2015.~~

9 (2) The date a return is received shall be determined by the  
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with  
12 respect to the cut-off date, the date a return is received, and whether  
13 a return has been timely filed for purposes of this subdivision ~~shall~~  
14 *may* not be reviewed in any administrative or judicial proceeding.

15 (B) Any disallowance of a credit claimed due to a determination  
16 under this subdivision, including the application of the limitation  
17 specified in paragraph (1), shall be treated as a mathematical error  
18 appearing on the return. Any amount of tax resulting from such  
19 disallowance may be assessed by the Franchise Tax Board in the  
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice  
22 on its Internet Web site with respect to the amount of credit under  
23 this section and Section 23623 claimed on timely filed original  
24 returns received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules,  
26 guidelines, or procedures necessary or appropriate to carry out the  
27 purposes of this section, including any guidelines regarding the  
28 limitation on total credits allowable under this section and Section  
29 23623 and guidelines necessary to avoid the application of  
30 paragraph (2) of subdivision (f) through split-ups, shell  
31 corporations, partnerships, tiered ownership structures, or  
32 otherwise.

33 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code does not apply to  
35 any standard, criterion, procedure, determination, rule, notice, or  
36 guideline established or issued by the Franchise Tax Board  
37 pursuant to this section.

38 (i) This section shall remain in effect only until December ~~1,~~  
39 ~~2016~~ 31, 2014, and as of that date is repealed.

1 SEC. 4. Section 23101 of the Revenue and Taxation Code is  
2 amended to read:

3 23101. (a) “Doing business” means actively engaging in any  
4 transaction for the purpose of financial or pecuniary gain or profit.

5 (b) For taxable years beginning on or after January 1, 2011, a  
6 taxpayer is doing business in this state for a taxable year if any of  
7 the following conditions has been satisfied:

8 (1) The taxpayer is organized or commercially domiciled in this  
9 state.

10 (2) Sales, as defined in subdivision (f) of Section 25120, of the  
11 taxpayer in this state exceed the lesser of five hundred thousand  
12 dollars (\$500,000) or 25 percent of the taxpayer’s total sales. For  
13 purposes of this paragraph, sales of the taxpayer include sales by  
14 an agent or independent contractor of the taxpayer. For purposes  
15 of this paragraph, sales in this state shall be determined using the  
16 rules for assigning sales under Section 25135 and Section 25136  
17 and the regulations thereunder, as modified by regulations under  
18 Section 25137.

19 (3) The real property and tangible personal property of the  
20 taxpayer in this state exceed the lesser of fifty thousand dollars  
21 (\$50,000) or 25 percent of the taxpayer’s total real property and  
22 tangible personal property. The value of real and tangible personal  
23 property and the determination of whether property is in this state  
24 shall be determined using the rules contained in Sections 25129  
25 to 25131, inclusive, and the regulations thereunder, as modified  
26 by regulation under Section 25137.

27 (4) The amount paid in this state by the taxpayer for  
28 compensation, as defined in subdivision (c) of Section 25120,  
29 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent  
30 of the total compensation paid by the taxpayer. Compensation in  
31 this state shall be determined using the rules for assigning payroll  
32 contained in Section 25133 and the regulations thereunder, as  
33 modified by regulations under Section 25137.

34 (c) (1) The Franchise Tax Board shall annually revise the  
35 amounts in paragraphs (2), (3), and (4) of subdivision (b) in  
36 accordance with subdivision (h) of Section 17041.

37 (2) For purposes of the adjustment required by paragraph (1),  
38 subdivision (h) of Section 17041 shall be applied by substituting  
39 “2012” in lieu of “1988.”

1 (d) The sales, property, and payroll of the taxpayer include the  
2 taxpayer's pro rata or distributive share of pass-through entities.  
3 For purposes of this subdivision, "pass-through entities" means a  
4 partnership or an "S" corporation.

5 SEC. 5. Section 23623 of the Revenue and Taxation Code, as  
6 added by Section 8 of Chapter 10 of the Third Extraordinary  
7 Session of the Statutes of 2009, is repealed.

8 SEC. 6. Section 23623 of the Revenue and Taxation Code, as  
9 added by Section 8 of Chapter 17 of the Third Extraordinary  
10 Session of the Statutes of 2009, is amended to read:

11 23623. (a) There shall be allowed *as* a credit against the "tax,"  
12 as defined in Section 23036, *the amount specified in paragraph*  
13 *(1) or (2)* for each net increase in qualified full-time employees,  
14 as specified in subdivision (c), hired during the taxable year by a  
15 qualified employer ~~as follows:~~ *employer.*

16 (1) For each taxable year beginning on or after January 1, 2009,  
17 and before January 1, ~~2011~~ 2012, the credit shall be equal to three  
18 thousand dollars (\$3,000).

19 (2) For each taxable year beginning on or after January 1, ~~2011~~  
20 2012, and before January 1, ~~2015~~ 2014, the credit shall be equal  
21 to four thousand dollars (\$4,000).

22 (b) For purposes of this section:

23 (1) "Acquired" includes any gift, inheritance, transfer incident  
24 to divorce, or any other transfer, whether or not for consideration.

25 (2) "Qualified full-time employee" means:

26 (A) A qualified employee who was paid qualified wages during  
27 the taxable year by the qualified employer for services of not less  
28 than an average of 35 hours per week.

29 (B) A qualified employee who was a salaried employee and  
30 was paid compensation during the taxable year for full-time  
31 employment, within the meaning of Section 515 of the Labor Code,  
32 by the qualified employer.

33 (3) A "qualified employee" shall not include any of the  
34 following:

35 (A) An employee certified as a qualified employee in an  
36 enterprise zone designated in accordance with Chapter 12.8  
37 (commencing with Section 7070) of Division 7 of Title 1 of the  
38 Government Code.

1 (B) An employee certified as a qualified disadvantaged  
2 individual in a manufacturing enhancement area designated in  
3 accordance with Section 7073.8 of the Government Code.

4 (C) An employee certified as a qualified employee in a targeted  
5 tax area designated in accordance with Section 7097 of the  
6 Government Code.

7 (D) An employee certified as a qualified disadvantaged  
8 individual or a qualified displaced employee in a local agency  
9 military base recovery area (LAMBRA) designated in accordance  
10 with Chapter 12.97 (commencing with Section 7105) of Division  
11 7 of Title 1 of the Government Code.

12 (E) An employee whose wages are included in calculating any  
13 other credit allowed under this part.

14 (4) “Qualified employer” means ~~either of the following:~~

15 (A) ~~For each taxable year~~ *taxable years* beginning on or after  
16 January 1, 2009, and before January 1, ~~2011~~ 2012, a taxpayer that,  
17 as of the last day of the preceding taxable year, employed a total  
18 of 20 or fewer employees.

19 (B) ~~For each taxable year beginning on or after January 1, 2011~~  
20 *taxable years beginning on or after January 1, 2012, and before*  
21 *January 1, 2014*, a taxpayer that, as of the last day of the preceding  
22 taxable year, employed a total of 50 or fewer employees.

23 (5) “Qualified wages” means wages subject to Division 6  
24 (commencing with Section 13000) of the Unemployment Insurance  
25 Code.

26 (6) (A) “Annual full-time equivalent” means either of the  
27 following:

28 (i) In the case of a full-time employee paid hourly qualified  
29 wages, “annual full-time equivalent” means the total number of  
30 hours worked for the taxpayer by the employee (not to exceed  
31 2,000 hours per employee) divided by 2,000.

32 (ii) In the case of a salaried full-time employee, “annual full-time  
33 equivalent” means the total number of weeks worked for the  
34 taxpayer by the employee divided by 52.

35 (B) If either of the taxable years used to compute the net increase  
36 in qualified full-time employees in paragraph (1) of subdivision  
37 (c) is a period of less than 12 months, the computation of “annual  
38 full-time equivalents” as prescribed in subparagraph (A) shall be  
39 annualized by adjusting the number of hours or weeks, respectively,

1 in the formula so that each annual full-time equivalent equals a  
2 12-month equivalent.

3 (c) The net increase in qualified full-time employees of a  
4 qualified employer shall be determined as provided by this  
5 subdivision:

6 (1) (A) The net increase in qualified full-time employees shall  
7 be determined on an annual full-time equivalent basis by  
8 subtracting from the amount determined in subparagraph (C) the  
9 amount determined in subparagraph (B).

10 (B) The total number of qualified full-time employees employed  
11 in the preceding taxable year by the taxpayer and by any trade or  
12 business acquired by the taxpayer during the current taxable year.

13 (C) The total number of full-time employees employed in the  
14 current taxable year by the taxpayer and by any trade or business  
15 acquired during the current taxable year.

16 (2) For taxpayers ~~who~~ *that* first commence doing business in  
17 this state during the taxable year, the number of full-time  
18 employees for the immediately preceding prior taxable year shall  
19 be zero.

20 (d) In the case where the credit allowed by this section exceeds  
21 the “tax,” the excess may be carried over to reduce the “tax” in  
22 the following year, and *the* succeeding seven years if necessary,  
23 until the credit is exhausted.

24 (e) Any deduction otherwise allowed under this part for qualified  
25 wages shall not be reduced by the amount of the credit allowed  
26 under this section.

27 (f) For purposes of this section:

28 (1) All employees of the trades or businesses that are treated as  
29 related under either Section 267, 318, or 707 of the Internal  
30 Revenue Code shall be treated as employed by a single taxpayer.

31 (2) In determining whether the taxpayer has first commenced  
32 doing business in this state during the taxable year, the provisions  
33 of subdivision (g) of Section 24416.20, without application of  
34 paragraph (7) of that subdivision, shall apply.

35 (g) (1) (A) Credit under this section and Section 17053.80 shall  
36 be allowed only for credits claimed on ~~timely filed original returns~~  
37 *a timely filed original return* received by the Franchise Tax Board  
38 on or before the cut-off date established by the Franchise Tax  
39 Board.

- 1 (B) For purposes of this paragraph, the cut-off date shall be the  
2 ~~earlier date of the following:~~
- 3 ~~(i) The last day of the calendar quarter within which the~~  
4 ~~Franchise Tax Board estimates it will have received timely filed~~  
5 ~~original returns claiming credits under this section and Section~~  
6 ~~17053.80 that cumulatively total four hundred million dollars~~  
7 ~~(\$400,000,000) for all taxable years.~~
- 8 ~~(ii) December 31, 2015.~~
- 9 (2) The date a return is received shall be determined by the  
10 Franchise Tax Board.
- 11 (3) (A) The determinations of the Franchise Tax Board with  
12 respect to the cut-off date, the date a return is received, and whether  
13 a return has been timely filed for purposes of this subdivision ~~shall~~  
14 ~~may~~ not be reviewed in any administrative or judicial proceeding.
- 15 (B) Any disallowance of a credit claimed due to a determination  
16 under this subdivision, including the application of the limitation  
17 specified in paragraph (1), shall be treated as a mathematical error  
18 appearing on the return. Any amount of tax resulting from such  
19 disallowance may be assessed by the Franchise Tax Board in the  
20 same manner as provided by Section 19051.
- 21 (4) The Franchise Tax Board shall periodically provide notice  
22 on its Internet Web site with respect to the amount of credit under  
23 this section and Section 17053.80 claimed on timely filed original  
24 returns received by the Franchise Tax Board.
- 25 (h) (1) The Franchise Tax Board may prescribe rules,  
26 guidelines, or procedures necessary or appropriate to carry out the  
27 purposes of this section, including any guidelines regarding the  
28 limitation on total credits allowable under this section and Section  
29 17053.80 and guidelines necessary to avoid the application of  
30 paragraph (2) of subdivision (f) through split-ups, shell  
31 corporations, partnerships, tiered ownership structures, or  
32 otherwise.
- 33 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code does not apply to  
35 any standard, criterion, procedure, determination, rule, notice, or  
36 guideline established or issued by the Franchise Tax Board  
37 pursuant to this section.
- 38 (i) This section shall remain in effect only until December ~~1,~~  
39 ~~2016 31, 2014~~, and as of that date is repealed.

1     ~~SEC. 7. Section 25113 of the Revenue and Taxation Code, as~~  
2 ~~added by Section 4 of Chapter 657 of the Statutes of 2003, is~~  
3 ~~amended to read:~~

4     ~~25113. (a) Except as provided in subdivision (f), for taxable~~  
5 ~~years beginning on or after January 1, 2003, the election provided~~  
6 ~~for in Section 25110 shall be made on an original, timely filed~~  
7 ~~return for the year of the election. The election will be considered~~  
8 ~~valid if both of the following conditions are satisfied:~~

9     ~~(1) The tax is computed in a manner consistent with a~~  
10 ~~water's-edge election.~~

11     ~~(2) A written notification of election is filed with the return on~~  
12 ~~a form prescribed by the Franchise Tax Board. Pursuant to~~  
13 ~~regulations promulgated under this section, the Franchise Tax~~  
14 ~~Board may accept the filing of other objective evidence that~~  
15 ~~supports the conclusion that a water's-edge election was intended~~  
16 ~~in lieu of notification on the designated form.~~

17     ~~(b) Except as otherwise provided, a water's-edge election shall~~  
18 ~~be effective only if made by every member of the self-assessed~~  
19 ~~combined reporting group that is subject to taxation under this~~  
20 ~~part.~~

21     ~~(1) An election made on a group return of a self-assessed~~  
22 ~~combined reporting group shall constitute an election by each~~  
23 ~~taxpayer member included in that group return, unless one of those~~  
24 ~~taxpayers files a separate return in which no election is made and~~  
25 ~~paragraph (2) does not apply.~~

26     ~~(2) A taxpayer that fails to make an election on its own timely~~  
27 ~~filed original return shall be deemed to have elected if either of~~  
28 ~~the following applies:~~

29     ~~(A) It has a parent corporation that is an electing taxpayer that~~  
30 ~~included the income and apportionment factors of the nonelecting~~  
31 ~~taxpayer in the self-assessed combined reporting group reflected~~  
32 ~~in the electing parent's timely filed original return, including a~~  
33 ~~group return.~~

34     ~~(B) The income and apportionment factors of the nonelecting~~  
35 ~~taxpayer are reflected in the self-assessed combined reporting~~  
36 ~~group of a timely filed original return of an electing taxpayer, and~~  
37 ~~the notification of election filed by the electing taxpayer pursuant~~  
38 ~~to paragraph (2) of subdivision (a) is signed by an officer or other~~  
39 ~~authorized agent of either a parent corporation of the nonelecting~~

1 taxpayer or another corporation with authority to bind the  
2 nonelecting taxpayer to an election.

3 (3) For purposes of this subdivision, a “parent corporation” of  
4 the taxpayer is a corporation that owns or constructively owns  
5 stock possessing more than 50 percent of the voting power of the  
6 taxpayer as determined under subdivisions (e) and (f) of Section  
7 25105.

8 (4) If a corporation that is a member of a combined reporting  
9 group is not itself subject to taxation under this part in the year for  
10 which the water’s-edge election is made, but subsequently becomes  
11 subject to taxation under this part, that corporation shall be deemed  
12 to have elected with the other taxpayer members of the combined  
13 reporting group.

14 (5) A taxpayer that is engaged in more than one apportioning  
15 trade or business, as defined in paragraph (2) of subdivision (c) of  
16 Section 25128, may make a separate election for each apportioning  
17 trade or business.

18 (e) A water’s-edge election shall remain in effect or be  
19 terminated in accordance with this subdivision.

20 (1) Except as otherwise provided in this subdivision, if one or  
21 more electing taxpayer members of a combined reporting group  
22 later become disaffiliated or otherwise cease to be included in the  
23 combined reporting group, the water’s-edge election shall remain  
24 in effect as to both the departing taxpayer members and any  
25 remaining taxpayer members.

26 (2) If an electing taxpayer and a nonelecting taxpayer become  
27 members of a new unitary affiliate group, the nonelecting taxpayer  
28 shall be deemed to have elected if the value of the total business  
29 assets of the electing taxpayer, and its component unitary group,  
30 if any, is larger than the value of the total business assets of the  
31 nonelecting taxpayer, and its component unitary group, if any.  
32 Otherwise, the water’s-edge election shall be automatically  
33 terminated at the time the electing members become part of the  
34 combined report. For purposes of applying paragraphs (9) and  
35 (10), the commencement date of the deemed election shall be the  
36 same as the commencement date of the electing taxpayers.

37 (3) If taxpayers filing under water’s-edge elections with different  
38 commencement dates become members of a new unitary affiliate  
39 group, the earliest election date shall be deemed to apply to all  
40 electing taxpayers if the total business assets of the earlier electing

1 taxpayer, and its component unitary group, if any, is larger than  
2 the value of the total business assets of the later electing taxpayer,  
3 and its component unitary group, if any. Otherwise, the later  
4 election commencement date shall apply to all electing taxpayers.

5 (4) (A) If a taxpayer with an election that has been terminated  
6 under paragraph (9) or (10) becomes a member of a new unitary  
7 affiliate group that includes another electing or nonelecting  
8 taxpayer not affected by those paragraphs, any water's-edge  
9 election of the other taxpayer member, if applicable, shall  
10 terminate, and any restrictions on making a new water's-edge  
11 election, relating to an election terminated under those paragraphs,  
12 shall apply to all taxpayer members of the new unitary affiliate  
13 group if the total business assets of the taxpayer with the terminated  
14 election, and its component unitary group, if any, is larger than  
15 the other taxpayer, and its component unitary group, if any.  
16 Otherwise, paragraph (2) shall apply, if applicable. If paragraph  
17 (2) does not apply, all taxpayer members of the new unitary affiliate  
18 group will be treated as nonelecting taxpayers that are not subject  
19 to any restrictions on making a new water's-edge election.

20 (B) If two nonelecting taxpayers with different termination dates  
21 under paragraph (9) or (10) become members of a new unitary  
22 affiliate group, the earliest termination date shall be deemed to  
23 apply to all nonelecting taxpayers, as well as any restrictions on  
24 making a new water's-edge election relating to that termination,  
25 if the total business assets of the earlier terminating taxpayer, and  
26 its component unitary group, if any, is larger than the value of the  
27 total business assets of the later terminating taxpayer, and its  
28 component unitary group, if any. Otherwise, the later termination  
29 date, and the related restrictions on making a new water's-edge  
30 election, shall apply to all taxpayer members of the new unitary  
31 affiliate group.

32 (5) (A) Except as provided in subparagraph (B), if one or more  
33 electing taxpayers did not report their income and apportionment  
34 factors as members of a combined reporting group with one or  
35 more nonelecting taxpayers, and, pursuant to a Franchise Tax  
36 Board audit determination, the nonelecting taxpayers, are properly  
37 in the same combined reporting group as the electing taxpayers,  
38 the water's-edge election of the electing taxpayers shall remain in  
39 effect and the nonelecting taxpayers shall be deemed to have made  
40 a water's-edge election. The commencement date of the deemed

1 water's-edge election shall be the same as the commencement date  
2 of the electing taxpayers.

3 ~~(B) Subparagraph (A) may not apply if the value of total~~  
4 ~~business assets of the electing taxpayers does not exceed the value~~  
5 ~~of total business assets of the nonelecting taxpayers. In that event,~~  
6 ~~the water's-edge election of each electing taxpayer is terminated~~  
7 ~~as of the date the nonelecting taxpayers are, pursuant to the audit~~  
8 ~~determination described in subparagraph (A), properly included~~  
9 ~~in the same combined reporting group as the electing taxpayers.~~

10 ~~(C) For purposes of applying the business asset test of this~~  
11 ~~paragraph, the term "business assets" shall have the same meaning~~  
12 ~~as subparagraph (A) of paragraph (6), except that the business~~  
13 ~~assets of other members of the unitary affiliate group that are not~~  
14 ~~taxpayers shall not be taken into account.~~

15 ~~(D) Notwithstanding subparagraph (A), nonelecting taxpayers~~  
16 ~~may not be deemed to have made a water's-edge election if the~~  
17 ~~Franchise Tax Board audit determination described in subparagraph~~  
18 ~~(A) is withdrawn or otherwise overturned.~~

19 ~~(6) For purposes of paragraphs (2) to (5), inclusive, the following~~  
20 ~~shall apply:~~

21 ~~(A) "Business assets" are assets, including intangible assets,~~  
22 ~~other than stock of a member of the unitary affiliate group, which~~  
23 ~~are used in the conduct of the business of the unitary affiliate group~~  
24 ~~or would produce business income to the unitary affiliate group,~~  
25 ~~if an election were not in place, if the assets were sold. Business~~  
26 ~~assets shall be valued at net book value.~~

27 ~~(B) The phrase "unitary affiliate group" refers to all of those~~  
28 ~~corporations that would constitute a unitary group if a water's-edge~~  
29 ~~election were not made.~~

30 ~~(C) The phrase "new unitary affiliate group" refers to a unitary~~  
31 ~~affiliate group that is created by a new affiliation of two or more~~  
32 ~~corporations, or by the addition of one or more new members to~~  
33 ~~an existing unitary affiliate group.~~

34 ~~(D) The phrase "component unitary group" means that portion~~  
35 ~~of a group of corporations that have become members of a new~~  
36 ~~unitary affiliate group that were members of their own respective~~  
37 ~~unitary affiliate group prior to entering the new unitary affiliate~~  
38 ~~group, disregarding any corporations that did not become part of~~  
39 ~~the new unitary group.~~

1 ~~(7) In the application of paragraphs (2) to (4), inclusive, a series~~  
2 ~~of acquisitions as steps of a single transaction shall be aggregated~~  
3 ~~as a single change of membership.~~

4 ~~(8) In the event of a merger or consolidation, the water's-edge~~  
5 ~~status and election commencement date or termination date of the~~  
6 ~~surviving corporation shall be consistent with the result that would~~  
7 ~~have been obtained under paragraphs (2) to (4), inclusive, if the~~  
8 ~~surviving corporation had acquired the stock of the transferor~~  
9 ~~corporation.~~

10 ~~(9) A water's-edge election may be terminated without the~~  
11 ~~consent of the Franchise Tax Board after it has been in effect for~~  
12 ~~at least 84 months. The termination shall be made on an original,~~  
13 ~~timely filed return for the first year in which the water's-edge~~  
14 ~~election is to be terminated. To be effective, the termination shall~~  
15 ~~be made by every taxpayer that is a member of the water's-edge~~  
16 ~~group in the same manner as the election provided under~~  
17 ~~subdivisions (a) and (b).~~

18 ~~(10) A water's-edge election may be terminated before the~~  
19 ~~84-month period described in paragraph (9) has elapsed, but only~~  
20 ~~with the consent of the Franchise Tax Board. A request for~~  
21 ~~termination shall be made at the time and in the manner specified~~  
22 ~~by the Franchise Tax Board.~~

23 ~~(A) The request may be granted for good cause. For purposes~~  
24 ~~of this section, good cause shall have the same meaning as specified~~  
25 ~~in Treasury Regulations Section 1.1502-75(c).~~

26 ~~(B) The Franchise Tax Board shall consent to a termination~~  
27 ~~requested by all members of a water's-edge group, if the purpose~~  
28 ~~of the request is to permit the state to contract with an expatriate~~  
29 ~~corporation, or its subsidiary, pursuant to paragraph (2) of~~  
30 ~~subdivision (b) of Section 10286 of the Public Contract Code. A~~  
31 ~~water's-edge election terminated pursuant to this subparagraph~~  
32 ~~shall, however, be effective for the year in which the expatriate~~  
33 ~~corporation, or its subsidiary, enters into the contract with the state.~~

34 ~~(11) Except for deemed elections as provided in paragraphs (2),~~  
35 ~~(4), and (5), if a water's-edge election is terminated under~~  
36 ~~paragraph (9) or (10), another election may not be made under this~~  
37 ~~section for any taxable year that begins within the 84-month period~~  
38 ~~following the last day of the election period that was terminated.~~  
39 ~~The Franchise Tax Board may waive the application of this~~  
40 ~~prohibition period for good cause.~~

1 ~~(12) A water's-edge election shall remain in effect until~~  
2 ~~terminated.~~

3 ~~(d) For purposes of this section, the following shall apply:~~

4 ~~(1) A "combined reporting group" means those corporations~~  
5 ~~whose income and apportionment factors are properly considered~~  
6 ~~pursuant to this chapter in computing the income of the individual~~  
7 ~~taxpayer that is derived from or attributable to sources within this~~  
8 ~~state, taking into account a valid water's-edge election.~~

9 ~~(2) A "group return" refers to the single return which taxpayer~~  
10 ~~members of a combined reporting group may elect by contract to~~  
11 ~~file, in the form and manner prescribed by the Franchise Tax Board,~~  
12 ~~in lieu of filing their own respective returns.~~

13 ~~(3) A "self-assessed combined reporting group" means that~~  
14 ~~group of corporations whose income and apportionment factors~~  
15 ~~are reflected in a combined report prepared pursuant to this chapter~~  
16 ~~in a timely filed return, taking into account the effects of a~~  
17 ~~purported water's-edge election, whether or not the membership~~  
18 ~~of the corporations in that combined report was correctly~~  
19 ~~determined.~~

20 ~~(e) The Franchise Tax Board may prescribe any regulations as~~  
21 ~~may be necessary or appropriate to carry out the purposes of this~~  
22 ~~section.~~

23 ~~(f) To the extent that a taxpayer would have been required to~~  
24 ~~file on a water's-edge basis in its first taxable year beginning on~~  
25 ~~or after January 1, 2003, pursuant to a water's-edge election made~~  
26 ~~in a prior year under Section 25111, the terms of Section 25111~~  
27 ~~may not apply and the election shall be deemed to have been made~~  
28 ~~under the terms of this section. However, the commencement date~~  
29 ~~of the election made in a prior year under Section 25111 shall~~  
30 ~~continue to be treated as the commencement date of the~~  
31 ~~water's-edge election period for purposes of applying this section.~~

32 ~~(g) The amendments made to this section by the act adding this~~  
33 ~~subdivision shall apply to taxable years beginning on or after~~  
34 ~~January 1, 2011.~~

35 ~~SEC. 8. Section 25128 of the Revenue and Taxation Code is~~  
36 ~~amended to read:~~

37 ~~25128. (a) (1) Notwithstanding Section 38006, for taxable~~  
38 ~~years beginning on or after January 1, 2011, any apportioning trade~~  
39 ~~or business, other than an apportioning trade or business that is~~  
40 ~~described in subdivision (b) or that makes an election to apportion~~

1 its income in accordance with Section 25128.5, shall apportion its  
2 business income in accordance with this subdivision.

3 ~~(2) Notwithstanding Section 38006, for taxable years beginning~~  
4 ~~on or after January 1, 2011, all business income of an apportioning~~  
5 ~~trade or business described in paragraph (1) shall be apportioned~~  
6 ~~to this state by multiplying the business income by the sales factor.~~

7 ~~(b) If an apportioning trade or business derives more than 50~~  
8 ~~percent of its “gross business receipts” from conducting one or~~  
9 ~~more qualified business activities, as defined in subdivision (c);~~  
10 ~~all business income of the apportioning trade or business shall be~~  
11 ~~apportioned to this state by multiplying business income by a~~  
12 ~~fraction, the numerator of which is the property factor plus the~~  
13 ~~payroll factor plus the sales factor, and the denominator of which~~  
14 ~~is three.~~

15 ~~(c) For purposes of this section:~~

16 ~~(1) “Agricultural business activity” means any activity relating~~  
17 ~~to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,~~  
18 ~~plantation, ranch, nursery, or range. “Agricultural business activity”~~  
19 ~~also includes any activity relating to cultivating the soil or raising~~  
20 ~~or harvesting any agricultural or horticultural commodity,~~  
21 ~~including, but not limited to, the raising, shearing, feeding, caring~~  
22 ~~for, training, or management of animals on a farm as well as the~~  
23 ~~handling, drying, packing, grading, or storing on a farm of any~~  
24 ~~agricultural or horticultural commodity in its unmanufactured state,~~  
25 ~~but only if the owner, tenant, or operator of the farm regularly~~  
26 ~~produces more than one-half of the commodity so treated.~~

27 ~~(2) “Apportioning trade or business” means a distinct trade or~~  
28 ~~business whose business income is required to be apportioned~~  
29 ~~under Sections 25101 and 25120, limited, if applicable, by Section~~  
30 ~~25110, using the same denominator for each of the applicable~~  
31 ~~payroll, property, and sales factors.~~

32 ~~(3) “Banking or financial business activity” means any activity~~  
33 ~~attributable to dealings in money or moneyed capital in substantial~~  
34 ~~competition with the business of national banks.~~

35 ~~(4) “Extractive business activity” means any activity relating~~  
36 ~~to the production, refining, or processing of oil, natural gas, or~~  
37 ~~mineral ore.~~

38 ~~(5) “Gross business receipts” means gross receipts described in~~  
39 ~~subdivision (f) of Section 25120 (other than gross receipts from~~  
40 ~~sales or other transactions within an apportioning trade or business~~

1 between members of a group of corporations whose income and  
2 apportionment factors are required to be included in a combined  
3 report under Section 25101, limited, if applicable, by Section  
4 25110), whether or not the receipts are excluded from the sales  
5 factor by operation of Section 25137.

6 (6) “Qualified business activity” means any of the following:

7 (A) An agricultural business activity.

8 (B) An extractive business activity.

9 (C) A savings and loan activity.

10 (D) A banking or financial business activity.

11 (7) “Savings and loan activity” means any activity performed  
12 by savings and loan associations or savings banks which have been  
13 chartered by federal or state law.

14 (d) In any case where the income and apportionment factors of  
15 two or more savings associations or corporations are required to  
16 be included in a combined report under Section 25101, limited, if  
17 applicable, by Section 25110, both of the following shall apply:

18 (1) The application of the more than 50 percent test of  
19 subdivision (b) shall be made with respect to the “gross business  
20 receipts” of the entire apportioning trade or business of the group.

21 (2) The entire business income of the group shall be apportioned  
22 in accordance with either this section or Section 25128.5, as  
23 applicable.

24 (e) The amendments made to this section by the act adding this  
25 subdivision, shall apply to taxable years beginning on or after  
26 January 1, 2011.

27 SEC. 9. Section 25128.5 of the Revenue and Taxation Code  
28 is amended to read:

29 25128.5. (a) Notwithstanding Section 38006, for taxable years  
30 beginning on or after January 1, 2011, any apportioning trade or  
31 business, other than an apportioning trade or business described  
32 in subdivision (b) of Section 25128, may make an irrevocable  
33 annual election on an original timely filed return, in the manner  
34 and form prescribed by the Franchise Tax Board, to apportion its  
35 income in accordance with this section, and not in accordance with  
36 Section 25128, if the “tax,” as defined in Section 23036 before the  
37 application of any credits, using this section to apportion its  
38 business income, is not less than the “tax,” as defined in Section  
39 23036 before the application of any credits, using subdivision (a)  
40 of Section 25128 to apportion its business income.

1 ~~(b) Notwithstanding Section 38006, for taxable years beginning~~  
2 ~~on or after January 1, 2011, all business income of an apportioning~~  
3 ~~trade or business making an election under subdivision (a) shall~~  
4 ~~be apportioned to this state by multiplying the business income~~  
5 ~~by a fraction, the numerator of which is the property factor plus~~  
6 ~~the payroll factor plus twice the sales factor, and the denominator~~  
7 ~~of which is four.~~

8 ~~(c) The Franchise Tax Board is authorized to issue regulations~~  
9 ~~necessary or appropriate regarding the making of an election under~~  
10 ~~this section, including regulations that are consistent with rules~~  
11 ~~prescribed for making an election under Section 25113.~~

12 ~~SEC. 10. Section 25136 of the Revenue and Taxation Code is~~  
13 ~~amended to read:~~

14 ~~25136. (a) For taxable years beginning on or after January 1,~~  
15 ~~2011:~~

16 ~~(1) Sales from services are in this state to the extent the~~  
17 ~~purchaser of the service received the benefit of the service in this~~  
18 ~~state.~~

19 ~~(2) Sales from intangible property are in this state to the extent~~  
20 ~~the property is used in this state. In the case of marketable~~  
21 ~~securities, sales are in this state if the customer is in this state.~~

22 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~  
23 ~~are in this state if the real property is located in this state.~~

24 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~  
25 ~~property are in this state if the property is located in this state.~~

26 ~~(b) The Franchise Tax Board may prescribe those regulations~~  
27 ~~as necessary or appropriate to carry out the purposes of subdivision~~  
28 ~~(a).~~

29 ~~SEC. 7. Section 25128 of the Revenue and Taxation Code is~~  
30 ~~amended to read:~~

31 ~~25128. (a) (1) Notwithstanding Section 38006, for taxable~~  
32 ~~years beginning before January 1, 2012, all business income shall~~  
33 ~~be apportioned to this state by multiplying the business income~~  
34 ~~by a fraction, the numerator of which is the property factor plus~~  
35 ~~the payroll factor plus twice the sales factor, and the denominator~~  
36 ~~of which is four, except as provided in subdivision (b) or (c).~~

37 ~~(2) Notwithstanding Section 38006, for taxable years beginning~~  
38 ~~on or after January 1, 2012, all business income of an apportioning~~  
39 ~~trade or business described in paragraph (1) shall be apportioned~~  
40 ~~to this state by multiplying the business income by the sales factor,~~

1 *unless the trade or business meets the criteria of subdivision (b)*  
2 *or makes an election to apportion its income in accordance with*  
3 *Section 25128.7.*

4 (b) If an apportioning trade or business derives more than 50  
5 percent of its “gross business receipts” from conducting one or  
6 more qualified business activities, *as defined in subdivision (c)*,  
7 all business income of the apportioning trade or business shall be  
8 apportioned to this state by multiplying business income by a  
9 fraction, the numerator of which is the property factor plus the  
10 payroll factor plus the sales factor, and the denominator of which  
11 is three.

12 (c) For purposes of this section, a “qualified business activity”  
13 means the following:

- 14 (1) An agricultural business activity.
- 15 (2) An extractive business activity.
- 16 (3) A savings and loan activity.
- 17 (4) A banking or financial business activity.

18 (d) For purposes of this section:

19 (1) “Gross business receipts” means gross receipts described in  
20 subdivision ~~(e)~~ or (f) of Section 25120 (other than gross receipts  
21 from sales or other transactions within an apportioning trade or  
22 business between members of a group of corporations whose  
23 income and apportionment factors are required to be included in  
24 a combined report under Section 25101, limited, if applicable, by  
25 Section 25110), whether or not the receipts are excluded from the  
26 sales factor by operation of Section 25137.

27 (2) “Agricultural business activity” means ~~activities~~ *activity*  
28 relating to any stock, dairy, poultry, fruit, furbearing animal, or  
29 truck farm, plantation, ranch, nursery, or range. “Agricultural  
30 business activity” also includes ~~activities~~ *activity* relating to  
31 cultivating the soil or raising or harvesting any agricultural or  
32 horticultural commodity, including, but not limited to, the raising,  
33 shearing, feeding, caring for, training, or management of animals  
34 on a farm as well as the handling, drying, packing, grading, or  
35 storing on a farm any agricultural or horticultural commodity in  
36 its unmanufactured state, but only if the owner, tenant, or operator  
37 of the farm regularly produces more than one-half of the  
38 commodity so treated.

1 (3) “Extractive business activity” means ~~activities~~ *activity*  
2 relating to the production, refining, or processing of oil, natural  
3 gas, or mineral ore.

4 (4) “Savings and loan activity” means any ~~activities~~ *activity*  
5 performed by savings and loan associations or savings banks which  
6 have been chartered by federal or state law.

7 (5) “Banking or financial business activity” means ~~activities~~  
8 *activity* attributable to dealings in money or moneyed capital in  
9 substantial competition with the business of national banks.

10 (6) “Apportioning trade or business” means a distinct trade or  
11 business whose business income is required to be apportioned  
12 under Sections 25101 and 25120, limited, if applicable, by Section  
13 25110, using the same denominator for each of the applicable  
14 payroll, property, and sales factors.

15 ~~(7) Paragraph (4) of subdivision (c) shall apply only if the~~  
16 ~~Franchise Tax Board adopts the Proposed Multistate Tax~~  
17 ~~Commission Formula for the Uniform Apportionment of Net~~  
18 ~~Income from Financial Institutions, or its substantial equivalent,~~  
19 ~~and shall become operative upon the same operative date as the~~  
20 ~~adopted formula.~~

21 ~~(8)~~

22 (7) In any case where the income and apportionment factors of  
23 two or more savings associations or corporations are required to  
24 be included in a combined report under Section 25101, limited, if  
25 applicable, by Section 25110, both of the following shall apply:

26 (A) The application of the more than 50 percent test of  
27 subdivision (b) shall be made with respect to the “gross business  
28 receipts” of the entire apportioning trade or business of the group.

29 (B) The entire business income of the group shall be apportioned  
30 in accordance with either subdivision (a) or (b), or ~~subdivision (b)~~  
31 ~~of Section 25128.5 or 25128.7~~, as applicable.

32 *(e) The amendments made to this section by the act adding this*  
33 *subdivision shall apply to taxable years beginning on or after*  
34 *January 1, 2012.*

35 *SEC. 8. Section 25128.5 of the Revenue and Taxation Code is*  
36 *amended to read:*

37 25128.5. (a) Notwithstanding Section 38006, for taxable years  
38 beginning on or after January 1, 2011, *and before January 1, 2012*,  
39 any apportioning trade or business, other than an apportioning  
40 trade or business described in subdivision (b) of Section 25128,

1 may make an irrevocable annual election on an original timely  
2 filed return, in the manner and form prescribed by the Franchise  
3 Tax Board to apportion its income in accordance with this section,  
4 and not in accordance with Section 25128.

5 (b) Notwithstanding Section 38006, for taxable years beginning  
6 on or after January 1, 2011, *and before January 1, 2012*, all  
7 business income of an apportioning trade or business making an  
8 election described in subdivision (a) shall be apportioned to this  
9 state by multiplying the business income by the sales factor.

10 (c) The Franchise Tax Board is authorized to issue regulations  
11 necessary or appropriate regarding the making of an election under  
12 this section, including regulations that are consistent with rules  
13 prescribed for making an election under Section 25113.

14 (d) *This section shall not apply to taxable years beginning on*  
15 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

16 SEC. 9. *Section 25128.7 is added to the Revenue and Taxation*  
17 *Code, to read:*

18 25128.7. (a) *Notwithstanding Section 38006, for taxable years*  
19 *beginning on or after January 1, 2012, any apportioning trade or*  
20 *business, other than an apportioning trade or business described*  
21 *in subdivision (b) of Section 25128, may make an irrevocable*  
22 *annual election on an original timely filed return, in the manner*  
23 *and form prescribed by the Franchise Tax Board, to apportion its*  
24 *income in accordance with this section, and not in accordance*  
25 *with Section 25128, if the “tax,” as defined in Section 23036 before*  
26 *the application of any credits, using this section to apportion its*  
27 *business income, is not less than the “tax,” as defined in Section*  
28 *23036 before the application of any credits, using paragraph (2)*  
29 *of subdivision (a) of Section 25128 to apportion its business*  
30 *income.*

31 (b) *Notwithstanding Section 38006, for taxable years beginning*  
32 *on or after January 1, 2012, all business income of an apportioning*  
33 *trade or business making an election under subdivision (a) shall*  
34 *be apportioned to this state by multiplying the business income by*  
35 *a fraction, the numerator of which is the property factor plus the*  
36 *payroll factor plus twice the sales factor, and the denominator of*  
37 *which is four.*

38 (c) *The Franchise Tax Board is authorized to issue regulations*  
39 *necessary or appropriate regarding the making of an election*

1 *under this section, including regulations that are consistent with*  
2 *rules prescribed for making an election under Section 25113.*

3 *SEC. 10. Section 25136 of the Revenue and Taxation Code is*  
4 *amended to read:*

5 25136. (a) For taxable years beginning before January 1, 2011,  
6 and for taxable years beginning on or after January 1, 2011, *and*  
7 *before January 1, 2012*, for which Section 25128.5 is operative  
8 and an election under subdivision (a) of Section 25128.5 has not  
9 been made, sales, other than sales of tangible personal property,  
10 are in this state if:

11 (1) The income-producing activity is performed in this state; or  
12 (2) The income-producing activity is performed both in and  
13 outside this state and a greater proportion of the income-producing  
14 activity is performed in this state than in any other state, based on  
15 costs of performance.

16 (3) This subdivision shall apply, and subdivision (b) shall not  
17 apply, for any taxable year beginning on or after January 1, 2011,  
18 for which Section 25128.5 is not operative for any taxpayer subject  
19 to the tax imposed under this part.

20 (b) For taxable years beginning on or after January 1, 2011, *and*  
21 *before January 1, 2012*:

22 (1) Sales from services are in this state to the extent the  
23 purchaser of the service received the benefit of the service in this  
24 state.

25 (2) Sales from intangible property are in this state to the extent  
26 the property is used in this state. In the case of marketable  
27 securities, sales are in this state if the customer is in this state.

28 (3) Sales from the sale, lease, rental, or licensing of real property  
29 are in this state if the real property is located in this state.

30 (4) Sales from the rental, lease, or licensing of tangible personal  
31 property are in this state if the property is located in this state.

32 (5) (A) If Section 25128.5 is operative, then this subdivision  
33 shall apply in lieu of subdivision (a) for any taxable year for which  
34 an election has been made under subdivision (a) of Section  
35 25128.5.

36 (B) If Section 25128.5 is not operative, then this subdivision  
37 shall not apply and subdivision (a) shall apply for any taxpayer  
38 subject to the tax imposed under this part.

1 (C) Notwithstanding subparagraphs (A) or (B), this subdivision  
 2 shall apply for purposes of paragraph (2) of subdivision (b) of  
 3 Section 23101.

4 (c) The Franchise Tax Board may prescribe those regulations  
 5 as necessary or appropriate to carry out the purposes of subdivision  
 6 (b).

7 (d) *This section shall not apply to taxable years beginning on*  
 8 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

9 *SEC. 11. Section 25136.1 is added to the Revenue and Taxation*  
 10 *Code, to read:*

11 *25136.1. (a) Notwithstanding Section 38006, for taxable years*  
 12 *beginning on or after January 1, 2012, sales are in this state if:*

13 *(1) Sales from services are in this state to the extent the*  
 14 *purchaser of the service received the benefit of the services in this*  
 15 *state.*

16 *(2) Sales from intangible property are in this state to the extent*  
 17 *the property is used in this state. In the case of marketable*  
 18 *securities, sales are in this state if the customer is in this state.*

19 *(3) Sales from the sale, lease, rental, or licensing of real*  
 20 *property are in this state if the real property is located in this state.*

21 *(4) Sales from the rental, lease, or licensing of tangible personal*  
 22 *property are in this state if the property is located in this state.*

23 *(b) The Franchise Tax Board may prescribe regulations as*  
 24 *necessary or appropriate to carry out the purposes of this section.*

25 ~~SEC. 11.~~

26 *SEC. 12. Section ~~25136.1~~ 25136.2 is added to the Revenue*  
 27 *and Taxation Code, to read:*

28 ~~25136.1.~~

29 *25136.2. (a) For taxable years beginning on or after January*  
 30 *1, ~~2011~~ 2012, a qualified taxpayer that apportions its business*  
 31 *income under Section 25128 shall apply the following provisions:*

32 *(1) Notwithstanding Section 25137, qualified sales assigned to*  
 33 *this state shall be equal to 50 percent of the amount of qualified*  
 34 *sales that would be assigned to this state pursuant to Section ~~25136~~*  
 35 *25136.1 but for the application of this section. The remaining 50*  
 36 *percent shall not be assigned to this state.*

37 *(2) All other sales shall be assigned pursuant to Section ~~25136~~*  
 38 *25136.1.*

39 (b) For purposes of this section:

1 (1) “Qualified taxpayer” means a member, as defined in  
2 paragraph (10) of subdivision (b) of Section 25106.5 of Title 18  
3 of the California Code of Regulations, as in effect on the effective  
4 date of the act adding this section, of a combined reporting group  
5 that is also a qualified group.

6 (2) “Qualified group” means a combined reporting group, as  
7 defined in paragraph (3) of subdivision (b) of Section 25106.5 of  
8 Title 18 of the California Code of Regulations, as in effect on the  
9 effective date of the act adding this section, that satisfies the  
10 following conditions:

11 (A) Has satisfied the minimum investment requirement for the  
12 taxable year.

13 (B) For the combined reporting group’s taxable year beginning  
14 in calendar year 2006, the combined reporting group derived more  
15 than 50 percent of its United States network gross business receipts  
16 from the operation of one or more cable systems.

17 (C) For purposes of satisfying the requirements of subparagraph  
18 (B), the following rules shall apply:

19 (i) If a member of the combined reporting group for the taxable  
20 year was not a member of the same combined reporting group for  
21 the taxable year beginning in calendar year 2006, the gross business  
22 receipts of that nonincluded member shall be included in  
23 determining the combined reporting group’s gross business receipts  
24 for its taxable year beginning in calendar year 2006 as if the  
25 nonincluded member were a member of the combined reporting  
26 group for the taxable year beginning in calendar year 2006.

27 (ii) The gross business receipts shall include the gross business  
28 receipts of a qualified partnership, but only to the extent of a  
29 member’s interest in the partnership.

30 (3) “Cable system” and “network” shall have the same meaning  
31 as defined in Section 5830 of the Public Utilities Code, as in effect  
32 on the effective date of the act adding this section. “Network  
33 services” means video, cable, voice, or data services.

34 (4) “Gross business receipts” means gross receipts defined in  
35 paragraph (2) of subdivision (f) of Section 25120 (other than gross  
36 receipts from sales or other transactions between or among  
37 members of a combined reporting group, limited, if applicable, by  
38 Section 25110).

39 (5) “Minimum investment requirement” means qualified  
40 expenditures of not less than two hundred fifty million dollars

1 (\$250,000,000) by a combined reporting group during the calendar  
2 year that includes the beginning of the taxable year.

3 (6) “Qualified expenditures” means any combination of  
4 expenditures attributable to this state for tangible property, payroll,  
5 services, franchise fees, or any intangible property distribution or  
6 other rights, paid or incurred by or on behalf of a member of a  
7 combined reporting group.

8 (A) An expenditure for other than tangible property shall be  
9 attributable to this state if the member of the combined reporting  
10 group received the benefit of the purchase or expenditure in this  
11 state.

12 (B) A purchase of or expenditure for tangible property shall be  
13 attributable to this state if the property is placed in service in this  
14 state.

15 (C) Qualified expenditures shall include expenditures by a  
16 combined reporting group for property or services purchased, used,  
17 or rendered by independent contractors in this state.

18 (D) Qualified expenditures shall also include expenditures by  
19 a qualified partnership, but only to the extent of the member’s  
20 interest in the partnership.

21 (7) “Qualified partnership” means a partnership if the  
22 partnership’s income and apportionment factors are included in  
23 the income and apportionment factors of a member of the combined  
24 reporting group, but only to the extent of the member’s interest in  
25 the partnership.

26 (8) “Qualified sales” means gross business receipts from the  
27 provision of any network services, other than gross business  
28 receipts from the sale or rental of customer premises equipment.  
29 “Qualified sales” shall include qualified sales by a qualified  
30 partnership, but only to the extent of a member’s interest in the  
31 partnership.

32 (c) The rules in this section with respect to qualified sales by a  
33 qualified partnership are intended to be consistent with the rules  
34 for partnerships under paragraph (3) of subdivision (f) of Section  
35 25137-1 of Title 18 of the California Code of Regulations.

36 ~~SEC. 12.~~

37 *SEC. 13.* This act is an urgency statute necessary for the  
38 immediate preservation of the public peace, health, or safety within  
39 the meaning of Article IV of the Constitution and shall go into  
40 immediate effect. The facts constituting the necessity are:

- 1 In order to mitigate acute fiscal difficulties facing the state, it is
- 2 necessary that this act take effect immediately.

O